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SENSITIVE

DEPT FOR AF/E, AF/RSA, AF/EPS, INL/C, AND EEB/ESC/TFS
JUSTICE FOR AFMLS, OIA, AND OPDAT
TREASURY FOR FINCEN
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SIPDIS

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TAGS: PTER KCRM KTFN ECON EFIN KE
SUBJECT: KENYA: ANTI-MONEY LAUNDERING BILL MOVES FORWARD

REFS: A) NAIROBI 1088, B) NAIROBI 1019

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¶11. (SBU) Summary: The Proceeds of Crime and Anti-Money Laundering bill survived its second reading in Kenya's Parliament on May 8. Despite criticism from some MPs, the bill was sent to two committees for review, amendment and decision. The GOK's interagency Anti-Money Laundering Task Force is optimistic (again) that Parliament will eventually pass the bill, but fears it will not pass before the August 17-23 plenary meeting of the Eastern and Southern African Anti-Money Laundering Group (ESAAMLG), which will be held in Nairobi. Members of the new Muslim Caucus will almost certainly demand that the bill be watered down or killed. The Task Force welcomed the Ambassador's advocacy for the AML bill with President Kibaki and Prime Minister Odinga, but asked that USG support be kept discreet. End summary.

GOK Legislative Strategy

¶12. (SBU) Emboffs met with the GOK's interagency Anti-Money Laundering (AML) Task Force on May 13 to discuss the status of the AML bill and the GOK's strategy for passage (ref A). Task force members felt the May 8 session, in which the AML bill survived its second reading unscathed and was sent to both the Finance, Planning and Trade, and the Administration of Justice and Legal Affairs Committees for review and comment, showed general support from MPs. The GOK would have to educate Parliament (again) through the usual workshops about money laundering and the bill to allay MPs' apprehensions about some provisions, but the two Committees may still propose amendments. The GOK will continue to emphasize the AML bill as anti-crime to distinguish it from previous anti-terrorism bills, and show it is not something being forced on Kenya by foreign powers as a condition for donor assistance or aimed at any religious group. The Task Force has not received any donor funding yet for the next round of workshops to brief MPs on the bill. If it needs USG support, Task Force would prefer the funding for be provided discreetly to avoid any public linkage. Comment: We believe this is feasible via USAID's existing Parliamentary Strengthening program. End comment.

¶13. (SBU) The Task Force said the AML bill has a very broad definition of predicate offences, but the Organized Crime bill would also have to be passed to address some specific counter-terrorism cases. The Office of the President and the Attorney General are amending the Crime bill to address the comments Parliament made last year. It is on the GOK's legislative agenda, but the Task Force would prefer to see the AML bill pass before the GOK introduces the

Organized Crime bill to keep them separate in peoples' minds.

¶4. (SBU) The Task Force noted that MPs Chris Okemo, Musikari Kombo, Lukas Chepkitony, and Jakoyo Midiwo on the Finance Committee had supported the bill in previous years and would likely do so again. They thought Eugene Wamalwa and Millie Odihambo were likely supporters on the Legal Affairs Committee, but that Abdiadir Mohammed and Amina Abdalla had stated their opposition. The Task Force had hoped Parliament would pass the bill before the August 17-23 plenary meeting of the Financial Action Task Force (FATF) Eastern and Southern African Anti-Money Laundering Group (ESAAMLG), which will be held in Nairobi. However, they did not appear optimistic the bill would be passed before the GOK presents its 2008-09 budget to Parliament in mid to late June, on which the MPs will likely focus until the August recess. If so, the AML bill couldn't be passed until the October-November session at the earliest.

Senior GOK Officials Express Strong Support for AML Bill

¶5. (U) Finance Minister Kimunya moved the AML bill in Parliament on May 8 for its second reading, addressing the various counter-arguments that have been previously advanced. He defined it as an anti-crime bill important to protecting Kenya from a wide variety of crimes. He linked laundering with corruption and said they both deter investment and fuel organized crime. He mentioned the Goldenberg scandal of the 1990s and the pyramid scams in which thousands of investors lost millions of shillings in 2007 as examples of the damage money laundering could do to Kenya. Kimunya warned that laundered funds are unreliable "hot" money whose unpredictable movement could destabilize the economy, rather than stable investment that fosters economic growth. He noted the UN Convention Against Transnational Organized Crime and the Financial Action Task Force (FATF) as Kenyan commitments and the basis for the bill. He also described FATF's nine additional recommendations to combat financing of terrorism and said the bill would help protect Kenya from further terrorist attacks. He assured the MPs the bill meets global standards and best practices. After listening to the comments from other MPs, Kimunya defended the bill as a "homegrown" solution to a Kenyan problem that was in Kenya's best interests, not a condition from development partners. He assured the MPs the bill was based on international conventions, not a copy of an American law, and it targeted crime, not any religious group.

¶6. (U) In the debate, the Minister for Special Programs, Dr. Naomi Shaban and the Assistant Minister for Environment and Mineral Resources Ramadhan Kajembe stated their support for the bill. Finance Committee member Chris Okemo welcomed the bill as necessary because money laundering is being done in Kenya by the "big fish." Finance Committee Member Ntoithia M'Mithiaru said the bill would bring Kenya into compliance with UN Conventions and the Basle Accord. MP Eugene Wamalwa of the Legal Affairs Committee also spoke in favor.

Some MPs Opposed the Bill, Seek to Amend in Committee

¶7. (U) MP Abdiadir Mohammed from the Legal Affairs Committee spoke at length, opposing the bill as a reincarnation of the previous Anti-Terrorism bill based on the dreaded Patriot Act of the U.S.A., not on FATF recommendations. He said the bill authorized unconstitutional expropriation of rightful property. He claimed the bill was inconsistent with the 1998 U.S. Supreme Court decision in favor of a Mr. Bajakajian that forfeiture of the entire \$367,000 that he had failed to declare to Customs was an excessive fine. He noted the bill was designed for an economy with a developed, widely used financial system, not Kenya's undeveloped cash economy, and would raise transaction costs.

¶8. (U) MP Aden Barre Duale, the whip of the new Muslim caucus, said the AML bill threatened Kenyans' property and human rights, and would be used to target Islamic charities and NGOs. He called for a bill that "governs" proceeds from drugs, prostitution, money laundering and terrorism, but not this bill.

Comment

¶9. (SBU) The AML Task Force has been over-optimistic about the AML bill's passage before, but we hope the upcoming August 17-23 ESAAMLG plenary in Nairobi, at which Kenya is supposed be elected Chairman for a year, will provide the necessary deadline or impetus for

action. The newly-formed Muslim caucus in parliament (Ref B) may try to kill the bill unless the GOK allays its fears of unfair targeting by convincing it the safeguards against abuse are sufficient, amending the bill to strengthen the safeguards, or weakening the enforcement powers given to the government. Post has kept the AML bill near the top of our legislative agenda, and the Ambassador has advocated strongly for its passage with President Kibaki and PM Odinga. Through existing USAID programs, we will also be looking at ways we can discreetly offer the Committees technical assistance to support the Task Force efforts to educate the new slate of MPs on the virtues of the legislation.

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